

Remarks

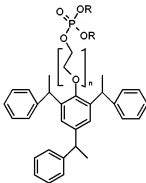
Claims 1 – 6 and 8 – 12 are the pending herein and are subject to rejection as noted below.

The Examiner is requested to enter and consider this response even though presented after final rejection

Claims 1 – 6, 8, 11 and 12 stand rejected under §102(a) and (e) as being anticipated by Pallett et al. (WO 02/21919) (Pallett). Applicants respectfully traverse.

Pallett teaches, *inter alia*, a composition comprising ethoxylated tristyryl phenol phosphate (Soprophor FL). It is submitted that this phosphate is not encompassed by the instant claims.

More specifically, ethoxylated tristyryl phenol phosphate can be represented by the following formula:



With regard to the amended claims presently submitted it can be seen that the formula provided with regard to the “phosphate” adjuvant does not encompass ethoxylated tristyryl phenol phosphate. Thus, it can be seen that with regard to the presently submitted claims, R¹⁵ can be hydrogen or an alkyl group containing 1 to 20 carbon atoms. The definition of R¹⁵ does not, however, extend to, for example, tristyryl phenol. Accordingly, contrary to the Examiner’s assertion, it is submitted that the subject matter of the presently submitted claims is novel vis-à-vis the disclosure WO 02/21919.

Accordingly, withdrawal of the §102 rejection of claims 1 – 6, 8, 11 and 12 over Pallett is respectfully requested.

The Examiner rejects claims 9 – 10 under § 103 as being unpatentable over Pallett '919 in view of US patent no. 2,927,014 (Goyette). Applicants respectfully traverse.

Applicants respectfully submit that the new Section 103 rejection is based upon a misunderstanding of the subject matter of presently submitted claims and an incorrect application of the Pallett reference. Even if one of ordinary skill were to combine the references in the manner suggested by the Examiner, it would not result in the subject matter of the presently claimed invention. In particular that the adjuvants of the presently submitted claims provide very different properties to those of ethoxylated tristyril phenol phosphate taught by Pallett.

Accordingly, withdrawal of the §103 rejection of claims 9 - 10 over Pallett in view of Goyette is respectfully requested.

Applicants respectfully traverse the Examiner's rejection of claims 1 – 6 and 9 – 11 under § 103 as being unpatentable over US 5,912,207 (Sher) in view of Goyette.

By way of summary, the present invention provides a formulation which improves the selectivity of the 2-(substituted benzoyl)-1,3-cyclohexanedione herbicides of formula (I). This is achieved by including in the formulation certain phosphate, phosphonate or phosphinate adjuvants, as defined by the amended claims, which have been shown to improve the level of activity of the 2-(substituted benzoyl)-1,3-cyclohexanedione with little or no increase in crop damage; i.e. the selectivity of the -(substituted benzoyl)-1,3-cyclohexanedione is increased. Accordingly, the phosphates, phosphonates and phosphinates of the present are added in the role of an adjuvant.

As already mentioned, Sher '207 simply describes the formation of metal chelates of herbicidal dione compounds as a means of chemically stabilizing the active ingredient. Phosphate salts are only mentioned in the context of providing an appropriate source of di- or tri-valent metals; not in an adjuvancy context.

Goyette teaches, *inter alia*, certain herbicidal phosphonate and phosphinate compounds.

Applicants respectfully submit that one of ordinary skill would have no reasonable expectation of success in the combination of Sher '207 and Goyette in the manner suggested by the Examiner. Goyette is only concerned with the provision of phosphonates or phosphinates for use in certain herbicidal compositions. There is no support in the cited references for the Examiner's contention that the phosphonates or phosphinates of Goyette would also improve the

herbicidal activity (selectivity) of 2-(substituted benzoyl)-1,3- cyclohexanedione herbicides. The herbicides of the primary reference and phosphonates or phosphinates of the secondary reference are chemically and functionally unrelated. Accordingly, such combination is only motivated in view of improper hindsight based on the teaching of the present invention. Applicants respectfully submit that the amended claims are patentable over US 5,912,207 in view of Goyette. Reconsideration and withdrawal of the 103 rejection are respectfully requested.

In view of the foregoing amendments and remarks, Applicants submit that the claims are in condition for allowance. Reconsideration and withdrawal of all rejections are respectfully requested, along with the issuance of a Notice of Allowance.

Respectfully submitted,

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